



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**SPOUSES BENITO BAYSA and
 VICTORIA BAYSA,**
 Petitioners,

G.R. No. 159271

Present:

- versus -

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, *JJ.*

**SPOUSES FIDEL PLANTILLA
 and SUSAN PLANTILLA,
 REGISTER OF DEEDS OF
 QUEZON CITY, and THE
 SHERIFF OF QUEZON CITY,**
 Respondents.

Promulgated:

JUL 13 2015

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DECISION

BERSAMIN, J.:

The petitioners seek the reversal and setting aside of the decision promulgated on December 20, 2002,¹ whereby the Court of Appeals (CA) declared the extrajudicial foreclosure of their mortgaged property valid.²

Antecedents

The case involves a real estate mortgage (REM) entered into by the petitioners involving their parcel of land in Cubao, Quezon City covered by their Transfer Certificate of Title No. 260376 of the Register of Deeds of Quezon City to secure the payment of their obligation amounting to ₱2.3 Million in favor of the respondent spouses. Based on the terms of the REM, the petitioners agreed to pay interest on the principal amount at the rate of 2.5%/month, or ₱57,500.00/month. Upon the default of the petitioners, the respondent spouses commenced the extrajudicial foreclosure of the REM to

¹ *Rollo*, pp. 37-44; penned by Associate Justice Romeo A. Brawner (later Presiding Justice), with Associate Justice Bienvenido L. Reyes (now a Member of this Court) and Associate Justice Danilo B. Pine (retired) concurring.

² *Id.* at 43.

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recover from the petitioners the total liability of ₱3,579,100.00 (inclusive of the principal and the unpaid interest).

The petitioners sued the respondent spouses in the Regional Trial Court (RTC) in Quezon City to annul the extrajudicial foreclosure of the REM and the public auction conducted pursuant to the extrajudicial foreclosure. They alleged that all the proceedings relevant to the extrajudicial foreclosure were null and void, pointing out that there had been no power or authority to sell inserted in the REM or attached thereto as required by Section 1 Act No. 3135; and that the interest rate of 8% was unconscionable and violative of the Anti-Usury Law.

The pertinent details as summarized by the RTC and adopted by the CA are the following:

On August 4, 1992, plaintiffs-spouses (Benito and Victoria Baysa) executed a real estate mortgage in favor of the defendants-spouses Fidel R. Plantilla and Susan Plantilla whereby plaintiffs-spouses mortgaged their parcel of land in Cubao, Quezon City x x x to secure the payment of their indebtedness in the principal sum of ₱2,300,000.00 and accruing interest at the legal rate thereon and payable according to the terms of the Mortgage Note xxx. The Mortgage Note signed by both parties containing the terms of payment and interest rate was also executed on August 4, 1992 xxx. It was expressly agreed upon by both parties in the mortgage note that the interest on the loan of ₱2,300,000.00 was 2.5% per month (₱57,500.00) or a monthly rate equal to 7 percentage points above the prime rate of the Standard Chartered Bank of Makati on the fifth working day before the interest is due. The improvements existing on the land in question are a house, shop and warehouse. This parcel of land including the improvements is worth P15 million. The interest at the rate of ₱57,500.00 from September 1992 up to May 1993 were regularly paid. They suffered business reverses and difficulty in collection so they became irregular in the monthly payment of the agreed interest and for late payment they were charged 8% interest per month, the same is reflected in the statement of account dated March 31, 1994 for ₱3,053,772.00 x x x in the statement of account as of May 6, 1994 x x x and in the statement of overdue account dated April 21, 1994 x x x. When 8% interest sur-charge was imposed, they stopped paying the monthly interest because of some difficulty in their business and high interest rate which overburdened them. Then the defendants filed an extrajudicial foreclosure. A certain Mrs. de la Cruz approaching them as representative of the defendants collecting the unpaid balance of ₱3,123,830.00 as reflected in the statement of account as of May 6, 1994 x x x and they told her that they were willing to pay what ever be the balance but the interest has to be recomputed not on the basis of 8% interest per month. They received a notice of sheriff's sale that the property will be foreclosed xxx, the amount of mortgage indebtedness was ₱3,579,100.00. Their principal loan was ₱2,300,000.00 and they have paid ₱1,032,599.88 for interest of the loan x x x. When he received the notice of sheriff's sale he was surprised because they have an agreement with the representative that they were asking for a period of six (6) months to pay after knowing the correct amount of their balance x x x.

The defendants' evidence x x x shows that x x x no payment was made by the plaintiffs on the principal loan of ₱2,300,000.00. Only the monthly interest of 2.5% of the principal or ₱57,500.00 were paid by the plaintiffs regularly from August 1992 until June 1993. The interest paid for the months of July, August, September and October, 1993 were paid late and after that no payments were made on the monthly interest from November 1993 until the property was foreclosed. When plaintiffs defaulted in the payment of the monthly interest, Emilia de la Cruz, certified public accountant, was consulted by the mother of the defendants who advised the latter to hire the services of counsel to file a petition for foreclosure of the mortgage. x x x (they) sent a letter of demand x x x addressed to plaintiffs-spouses Baysa to pay the principal loan and interest due x x x. Despite the receipt of the said letter of demand, plaintiffs did not pay their indebtedness to the defendants, hence, x x x a petition for foreclosure was filed with the Office of the Sheriff of the Quezon City Regional Trial Court which prayed that in view of the non-payment of the indebtedness of the plaintiffs in the amount of ₱3,579,100.00 (principal and unpaid interest) that the mortgaged property x x x be foreclosed at a public auction x x x.³

Decision of the RTC

After trial, the RTC rendered its decision dated December 27, 1996,⁴ disposing thusly:

WHEREFORE, a decision is hereby rendered in this case dismissing the instant complaint for lack of cause of action.

Ordering the plaintiffs to pay the defendants on the counterclaim the amount of ₱50,000.00 for moral damages, ₱50,000.00 for exemplary damages and ₱50,000.00 for attorney's fees, and to pay the costs of the suit.

SO ORDERED.⁵

In support of the dismissal of the petitioners' complaint, and in upholding the validity of the extrajudicial foreclosure, the RTC explained:

x x x The deed of real estate mortgage (Exh. A) in paragraph 13 thereof expressly states the consent of the mortgagors to the extra-judicial foreclosure of the mortgaged property in the event of non-payment, to wit:

Paragraph 13. x x x; - In the event of non-payment of the entire principal and accrued interest due under the conditions described in this paragraph, the mortgagors expressly and specifically agree to the extra-judicial foreclosure of the mortgaged property.⁶

³ Id. at 38-39.

⁴ Id. at 85-91.

⁵ Id. at 91.

⁶ Id. at 89.

Furthermore, the RTC allowed the additional interest of 8%, observing that:

x x x x The defendants did not increase the agreed interest of 2.5% per month. The 8% additional interest on accrued interest is allowed because accrued interest earns legal rate of interest which is now 12% per annum as per under Central Bank Circular No. 416 which applies to loans and forbearance of money.⁷ x x x x

Judgment of the CA

Aggrieved, the petitioners appealed, submitting the following issues for the resolution of the CA, namely:

1. Whether or not the extrajudicial foreclosure is valid despite the lack of provision in the mortgage deed granting special power to sell to the mortgagee;
2. If valid, whether the procedure taken thereon complies with the provisions of Act No. 3135, as amended; and
3. Whether or not the 8% compounded monthly interest is legal.⁸

On December 20, 2002, the CA promulgated the assailed judgment,⁹ affirming the validity of the foreclosure proceedings but invalidating the imposition of the 8% additional interest for lack of legal basis considering that the REM did not contain a stipulation to that effect. Its pertinent ratiocination and disposition stated:

We agree with the lower court that the extrajudicial foreclosure was not visited with vice for failure of the mortgagor in the mortgage deed to grant special power to sell the property in favor of the mortgagee. It suffices that the mortgagee document empowers the mortgagee to extrajudicially foreclose the property. Such authority to extrajudicially foreclose by necessary implication carries with it the grant of power to sell the property at a public auction. It is only when the deed is silent as to the grant of authority to extrajudicially foreclose on the mortgage that a mortgagee is prevented from availing of such remedy.

In *Centeno vs. Court of Appeals*, the Supreme Court, when confronted with the same issue, chose to uphold the validity of the extrajudicial foreclosure.

x x x x

⁷ Id. at 90.

⁸ Supra note 1, at 41.

⁹ Id.

But all is not lost with the appellants. We agree that the 8% monthly interest on the unpaid interest is not warranted by the mortgage deed, for there is nothing in it that provides for the imposition of such exorbitant interest on the unpaid interest. Article 1958 of the New Civil Code is clear on the matter: "(I)nterest due and unpaid shall not earn interest." And while the parties may stipulate to capitalize the interest due and unpaid, the same shall not be valid unless it be in writing, pursuant to Article 1956 of the Civil Code.

X X X X

WHEREFORE, the Decision of the lower court is hereby SET ASIDE. The extrajudicial foreclosure is hereby declared to be VALID, but a re-computation of the amount of mortgage indebtedness is ordered by removing the 8% interest imposed by the mortgagee on the unpaid interest. The award of moral and exemplary damages and attorney's fees are hereby DELETED.

SO ORDERED.¹⁰

Upon denial of the petitioners' motion for reconsideration, as well as of the respondent spouses' partial motion for reconsideration through the resolution promulgated on July 24, 2003,¹¹ the petitioner has come to the Court for a further review.

Issues

The issues raised by the petitioners can be narrowed down to:

- 1.) Whether or not the Court of Appeals erred when it declared that the extrajudicial foreclosure was valid despite the lack of provision in the mortgage deed granting special power to sell to the mortgagee;
- 2.) Whether or not the Court of Appeals erred when it concluded that consenting to the extrajudicial foreclosure of the property, by necessary implication, carries with it the grant of power to sell the property at public action;
- 3.) Whether or not the Court of Appeals erred in not declaring the 2.5% monthly interest illegal and usurious, considering that the 8% interest was already declared as invalid and unwarranted; and
- 4.) Whether or not the Court of Appeals erred in ruling that petitioners have lost their right to redeem the property.¹²

¹⁰ Id. at 41-43.

¹¹ *Rollo*, pp. 46-48.

¹² Id. at 14.

Ruling of the Court

The appeal is meritorious.

I

On the first and second issues, we hold the CA in error for affirming the RTC's declaration of the extrajudicial foreclosure as valid.

In the extrajudicial foreclosure of property subject of a real estate mortgage, Act No. 3135 (*An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages*) is quite explicit and definite about the special power to sell the property being required to be either inserted in or attached to the deed of mortgage. Section 1 of Act No. 3135 provides:

Section 1. When a sale is made under **a special power inserted in or attached to any real estate mortgage** hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following section shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

Accordingly, to enable the extrajudicial foreclosure of the REM of the petitioners, the special power to sell should have been either inserted in the REM itself or embodied in a separate instrument attached to the REM. But it is not disputed that no special power to sell was either inserted in the REM or attached to the REM. Hence, the respondent spouses as the foreclosing mortgagees could not initiate the extrajudicial foreclosure, but must resort to judicial foreclosure pursuant to the procedure set forth in Rule 68 of the *Rules of Court*. The omission of the special power to sell the property subject of the mortgage was fatal to the validity and efficacy of the extrajudicial foreclosure, and warranted the invalidation of the entire proceedings conducted by the sheriff.

The CA opined that the extrajudicial foreclosure was nonetheless valid despite the omission of the special power to sell. It upheld the ruling of the RTC by citing paragraph 13 of the REM, which stated:

In the event of non-payment of the entire principal and accrued interest due under the conditions described in this paragraph, the mortgagors expressly and specifically agree to the extra-judicial foreclosure of the mortgaged property.¹³

¹³ Id. at 89.

It held to be enough that the REM thereby empowered the respondent spouses as the mortgagees to extrajudicially foreclose the property inasmuch as such agreement by the petitioners (as the mortgagors) carried with it by necessary implication the grant of the power to sell the property at the public auction. It relied on the ruling in *Centeno v. Court of Appeals*.¹⁴

We cannot subscribe to the opinion of the CA.

Based on the text of paragraph 13, *supra*, the petitioners evidently agreed only to the holding of the extrajudicial foreclosure should they default in their obligations. Their agreement was a mere expression of their amenability to extrajudicial foreclosure as the means of foreclosing the mortgage, and did not constitute the special power or authority to sell the mortgaged property to enable the mortgagees to recover the unpaid obligations. What was necessary was the special power or authority to sell – whether inserted in the REM itself, or annexed thereto – that authorized the respondent spouses to sell in the public auction their mortgaged property.

The requirement for the special power or authority to sell finds support in the civil law. To begin with, because the sale of the property by virtue of the extrajudicial foreclosure would be made through the sheriff by the respondent spouses as the mortgagees acting as the agents of the petitioners as the mortgagors-owners, there must be a written authority from the latter in favor of the former as their agents; otherwise, the sale would be void.¹⁵ And, secondly, considering that, pursuant to Article 1878, (5), of the *Civil Code*, a special power of attorney was necessary for entering “into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration,” the written authority must be a special power of attorney *to sell*.¹⁶ Contrary to the CA’s opinion, therefore, the power or authority to sell by virtue of the extrajudicial foreclosure of the REM could not be necessarily implied from the text of paragraph 13, *supra*, expressing the petitioners’ agreement to the extrajudicial foreclosure.

The reliance on the ruling in *Centeno v. Court of Appeals* was inadequate, if not also misplaced. Although the *Centeno* Court was confronted with several issues, including whether or not the extrajudicial foreclosure of the mortgage was a total nullity because the deed of mortgage

¹⁴ G.R. No. L-40105, November 11, 1985, 139 SCRA 545.

¹⁵ Article 1874 of the *Civil Code* provides:

Article 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. (n)

¹⁶ Article 1879 of the *Civil Code* states:

Article 1879. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. (n)

did not contain a special power of attorney to sell in favor of the mortgagees, a meticulous reading of *Centeno* reveals that the Court did not expressly deal with and resolve such issue, because the Court limited itself to the effects of the failure of the petitioners thereat to annotate on the Torrens title the sale in their favor of the property. In other words, the Court was silent on the issue of validity of the foreclosure sale despite the lack of the special power of attorney to sell being inserted in or annexed to the deed of mortgage. Under the circumstances, *Centeno* has no precedential value in this case.

II

Anent the third issue, the petitioners contend that after declaring the 8% compounded interest invalid and unwarranted, the CA should have further declared the interest of 2.5%/month illegal and usurious; that with nullity of the stipulation of interest, the result should be as if the loan agreement contained no stipulation on interest; and that, consequently, the ₱1,032,599.88 paid as interest should be deducted from the principal loan of ₱2.3 Million for being illegal and usurious.

The contention of the petitioners is bereft of merit.

To start with, the petitioners are now estopped from assailing the validity of the monthly interest payments made. They expressly consented to be liable to pay 2.5%/month on the principal loan of ₱2.3 Million, and actually made several payments of interest at that rate. Secondly, they did not assail the rate of 2.5%/month as interest in the lower courts, doing so only in this appeal. Hence, they cannot be permitted to bring the issue for the first time in this Court, for that would be unfair not only to the adverse parties but also to the lower courts by depriving the latter of the opportunity to pass upon the issue. And, thirdly, the invalidation by the CA of the 8% compounded interest does not justify deleting the stipulation on the 2.5%/month interest that was really separate and distinct from the former.

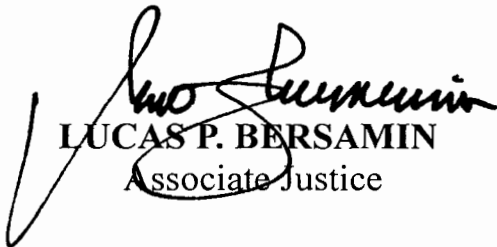
III

Having found and declared the extrajudicial foreclosure of the REM and the foreclosure sale of the mortgaged property of the petitioner void for want of the special power to sell, we deem it unnecessary to consider and determine the final issue on whether or not the petitioners had lost their right to redeem. In other words, there is no right of redemption to speak of if the foreclosure was void.


WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the judgment of the Court of


Appeals promulgated on December 20, 2002; **DECLARES** the extrajudicial foreclosure and the certificate of sale **NULL** and **VOID**; **CANCELS** Transfer Certificate of Title No. N-141864 registered in the names of respondents **SPOUSES FIDEL R. PLANTILLA** and **SUSAN PLANTILLA**; **DIRECTS** the Register of Deeds of Quezon City to **RESTORE** and **REINSTATE** Transfer Certificate of Title No. 260376 in the names of petitioners **SPOUSES BENITO A. BAYSA** and **VICTORIA C. BAYSA**; **REMANDS** this case to the court of origin for the recomputation and accounting of the mortgage indebtedness without the 8% interest imposed by the respondents on the unpaid interest; and **ORDERS** respondents **SPOUSES FIDEL R. PLANTILLA** and **SUSAN PLANTILLA** to pay the costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice